

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
ALABAMA *RECEIVED*  
NORTHERN DIVISION

UNITED STATES OF AMERICA )  
Plaintiff, )  
v. )  
APPROXIMATELY TWELVE )  
THOUSAND (\$12,000) DOLLARS IN )  
UNITED STATES CURRENCY )  
Defendant. )

2008 FEB 27 P 2:41  
ANDREW P. HACKETT, CLK  
MIDDLE DISTRICT OF ALABAMA

CIVIL ACTION NO.: 2:07-cv-687-MEF

**DEFENDANT'S MOTION FOR LEAVE TO FILE A DISPOSITIVE MOTION**

NOW COMES the Defendant/Claimant, Derrick Davis, by and through his attorney, Dustin Fowler, and asks this Honorable Court for leave to file a dispositive motion pursuant to Rule 15 and 16(b) of the Federal Rules of Civil Procedure and states as follows:

1. On or about September 28, 2007, this Honorable Court entered a scheduling order requiring all dispositive motions to be filed on or before February 8, 2008.
2. On or about February 19, 2008, the Plaintiff filed a Motion For Summary Judgment along with an Exhibit, which is an affidavit of Sgt. Andy L. Martin.
3. The information in the affidavit contradicts previous discovery sent by the Plaintiff. (*See attached Exhibit "A" and Plaintiff's Motion For Summary Judgment Exhibit "A"*).

4. The Defendant must first show good cause to amend the case scheduling order deadlines under the Federal Rules of Civil Procedure 16(b) before arguing to amend the pleadings under the Federal Rule of Civil Procedure 15(a). *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1419 (11<sup>th</sup> Cir. 2007). The Defendant believes he has met this burden by the contradictory evidence from Plaintiff. (See attached Exhibit "A" and Plaintiff's Motion For Summary Judgment Exhibit "A").

5. The Defendant feels strongly that the Plaintiff will not be prejudiced by the filing of said motion.

WHEREFORE, the Defendant/Claimant, Derrick Davis, prays that this Honorable Court grant said motion.

  
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Dustin Fowler (FOW017)  
Attorney For Defendant  
185 N. Oates Street  
Dothan, Alabama 36301

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion has been mailed by U.S. First Class Mail postage prepaid and/or hand delivered to the following attorney of record on this the 27<sup>th</sup> day of February, 2008.

Tommie Hardwick  
Assistant United States Attorney  
Middle District of Alabama  
131 Clayton Street  
Montgomery, Al 36101-0197

  
\_\_\_\_\_  
Dustin Fowler

FROM : -Fty of DotU

FAX NO. :334 793 1369

Feb. 06 2007 05:32PM PS

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

STATE OF ALABAMA

CITY OF DOTHAN, HOUSTON COUNTY

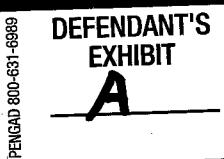
Before me, Bradley L. Martin, the undersigned authority, personally appeared Cpl. Andy L. Martin of the Dothan Police Department, who being by me first duly sworn, deposes and says he has reason to believe that located at 3071 Ross Clark Circle Room 249, there is now being concealed certain drugs, namely Marijuana which is illegally kept, used, and/or sold. The following facts tend to establish the foregoing grounds for issuance of a Search Warrant are as follows:

I am Cpl. Andy L. Martin of the Dothan Police Department's Vice/Intelligence Division. At approx. 2130 hrs., Sgt. Jackson received information from a confidential informant that a drug transaction was taking place in the rear parking lot of the Holiday Inn Express. The informant advised that the suspects were driving a white Dodge Magnum and a white Chevrolet Suburban. At approx. 2137 hrs., Inv. Ray Arnold and Cpl. Tim Miller arrived on the scene and stopped both vehicles. The white Dodge Magnum was being driven by B/M Derrick Davis. Mr. Davis was arrested for Possession of Marijuana II. He had approx. \$11,000.00 in U. S. Currency in his possession. The driver of the Chevrolet Suburban was B/M Rodney Caliste and he had approx. \$6500.00 in U.S. Currency in his possession. Mr. Caliste had a room key for the Holiday Inn Express in his pocket. I took the key to the front desk and the female clerk advised that the room key was no good. We later found out that the desk clerk is having Mr. Caliste's child. At approx. 2300 hrs., I observed the front desk clerk hand Mr. Caliste what appeared to be another room key as she left the business. Mr. Caliste then walked around the back of the building and entered an unknown room. Upon further investigation, we found that room 247 is rented to B/M Keone Johnson who is a known associate of Mr. Caliste. We also found that room 249 is registered to B/M Alton Rivers who is also a known associate of Mr. Caliste. On 01/19/2007 at approx. 0104 hrs., Cpl. Brad Cain arrived at the motel. Cpl. Cain walked his K-9 down the walkway and the dog alerted to the presence of narcotics at room 247 and 249. At approx. 0109 hrs., Off. Lynn Watkins arrived on the scene. He also walked his K-9 down the walkway and his dog also alerted on room 247 and 249.

Affiant shows that based on the above and forgoing facts and information, Affiant has probable cause to believe that the above-described property is concealed upon the aforesaid premises and is subject to seizure and makes this affidavit so that a warrant may issue to search the said premises.

Sworn to and Subscribed before  
me this 19th day of January 2007.

Bradley L. Martin  
Andy L. Martin



PENGAD 800-631-6889

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derrick davis

FROM :-F+y of. DotU

FAX NO. :334 793 1369

Feb. 06 2007 05:33PM P6

**Signature of Affiant**

Judge

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